IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.28-DB of 1998

DATE OF DECISION: September 20th, 2007.

Mukhtiar Singh and others

.....Appellants

versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MR.JUSTICE JASBIR SINGH
HON'BLE MRS.JUSTICE NIRMAL YADAV

Present: Mr.Vinod Ghai, Advocate for the appellants
Mr.V.K. Jindal, Additional Advocate General, Punjab, for the respondent

NIRMAL YADAV, J.

Accused-Mukhtiar Singh, son of Harnam Singh, Kesar Singh and Jarnail Singh, sons of Mukhtiar Singh and Jagroop Kaur, widow of Karnail Singh were tried for commission of various offences. Learned Sessions Judge, Sangrur, vide judgment dated 22.12.1997 acquitted Jagroop Kaur by giving her benefit of doubt, however, convicted the other three accused. Accused Kesar Singh was convicted for offences punishable under Sections 302, 307/34, 323/34 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.1000/- under Section 302 IPC and in default of payment of fine to further undergo rigorous imprisonment for one year. He was also sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.1000/-

under Section 307/34 IPC with default stipulation of six months' rigorous imprisonment. He was also sentenced to undergo rigorous imprisonment for three months under section 323/34 IPC. Accused Mukhtiar Singh and Jarnail Singh were convicted for offences punishable under Sections 307, 307/34, 323/34, and 302/34 IPC. Accused Mukhtiar Singh was also convicted for offence under Section 27 of the Arms Act. Both the accused Mukhtiar Singh and Jarnail Singh were sentenced to undergo rigorous imprisonment for five years with fine of Rs.1000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months each under Section 307 IPC. They were further sentenced to rigorous imprisonment for five years and to pay fine of Rs.1000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months each under Section 307/34 IPC. They were further sentenced to imprisonment for life and to pay fine of Rs.1000/- each IPC and in default of payment of fine to further undergo rigorous imprisonment for one year each under Section 302/34. Both these accused were also sentenced to undergo rigorous imprisonment for three months each under Section 323/34 IPC. Besides the above sentences, accused Mukhtiar Singh was also awarded sentence to undergo rigorous imprisonment for three years with fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for three months under Section 27 of the Arms Act. All the sentences of all the accused were ordered to run concurrently.

The criminal law was set in motion on the statement of Avtar Singh, PW3, the real brother of Mukhtiar Singh (accused) and Uncle of deceased Baldev Singh @ Bhim Singh, son of late Kartar Singh. According to him, on 26.9.1991, at about 9.00 P.M., he along with his son Ajaib Singh was present in his house. They heard some noise outside their house. When they came out, they found Mukhtiar Singh armed with a gun, Jarnail Singh armed with a *Gandasa*, Kesar Singh armed with *Bala* (a heavy wooden plank) and Jagroop Kaur armed with a *Soti*, present in front of neighbouring house of Baldev Singh @ Bhim Singh. They were challenging Baldev @ Bhim Singh and his brother Rup Singh as to how they had levelled false allegations against Mukhtiar Singh's daughter-in-law. When Baldev Singh and Rup Singh came out, Mukhtiar Singh exhorted his companions to charge at them. Thereupon, Kesar Singh gave a *Bala* blow on the head of Baldev Singh @ Bhim Singh, who fell down. Simultaneously, Jagroop Kaur gave a soti blow on the right knee of Rup Singh. Jarnail Singh gave a *Gandasa* blow on the head of Rup Singh. On receiving injuries, Rup Singh fell down and at that time Jarnail Singh gave another Gandasa blow on his head and then the next blow with *Gandasa* on scapular region. Harbans Singh, brother of Baldev Singh raised hue and cry from the roof of his house. He also pelted brick bats on the accused party. Mukhtiar Singh, accused fired two shots with his gun aiming at Harbans Singh. However he escaped unhurt. After causing injuries, the accused ran away with their respective weapons. Avtar

Singh sent his son Ajaib Singh to arrange for some conveyance and the latter went to the neighbouring Village Barrarwal and brought a tractor-trolley in which Avtar Singh, his brother Kaka Singh and injured Baldev Singh @ Bhim Singh and Rup Singh left for Civil Hospital, Dhuri. On the way, Avtar Singh and Kaka Singh got down from the tractor-trolley at the railway crossing. Thereafter, Avtar Singh made statement, Ex.PL which was recorded by ASI-Darshan Singh and completed at 1.40 A.M. on 27.9.1991. On the basis of statement, Ex.PL, FIR, Ex.PL/2 was registered at Police Station Dhuri at 1.45 A.M. on 27.9.1991.

The Investigating Officer went to Civil Hospital, Dhuri and obtained medico-legal reports of Rup Singh, PW4 as well as Jagroop Kaur, accused. Intimation with regard to death of Baldev Singh was also received by him. The special report was sent immediately thereafter. He moved application, Ex.PH before the Medical Officer to seek opinion if Rup Singh, injured was fit to make statement. The Medical Officer vide his opinion, Ex.PH/1 declared Rup Singh, unfit to make statement. Similarly, application, Ex.DC was moved before the Medical Officer to enquire if Jagroop Kaur was fit to make statement. She was also declared unfit to make statement vide opinion, Ex.DC/1. Thereafter, the Investigating Officer prepared inquest report, Ex.PB on the dead body of Baldev Singh in the mortuary.

The post-mortem on the dead-body of deceased Baldev Singh was conducted by PW1-Dr.Balbir Singh, who found the following:-

> "A lacerated wound 8 cm x 2 cm over the right parietal area placed in an antro posterior direction. The underlying right parietal bone showed fracture measuring 10 cm in length. On dissection, there was a huge subdural haemotoma in the area corresponding to the fracture and right cerebral hemi sphere showed laceration.
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> 2) An abrasion 4 cm x 2 cm present over the right knee joint area."

In the opinion of the doctor, the injuries were ante-mortem in nature and cause of death was head injury resulting in sub dural haemorrhage and laceration of the right cerebral hemisphere due to injury No.1, which was sufficient to cause death in the ordinary course of nature.

PW2-Dr.Baljit Singh medico-legally examined Rup Singh, PW4 and found the following injuries.

> "1. A lacerated wound 3 cm x 1 cm on the left parietal region of the skull. Medial end of the wound was 2 cm away from the mid line and lateral end 10 cm above the left ear. Fresh bleeding was present and x-ray was advised.
>
> 2. Complained of pain over the left scapula.

3. Complained of pain over the anterior aspect of right knee joint."

It was further mentioned that injury No.1 was kept under observation and injuries No.2 and 3 were declared simple. Kind of weapon used was blunt.

The Investigating Officer went to the spot and lifted blood-stained earth and two empties of .12 bore gun, which were separately made into parcels and taken into possession vide Memos, Ex.PQ and PR, respectively. Rough site plan, Ex.PS with correct marginal notes was prepared and statements of witnesses were recorded. Thereafter, ASI-Darshan Singh went to Civil Hospital, Dhuri and made application, Ex.PG before the Medical officer, who vide endorsement, Ex.PG/1 declared Rup Singh fit to make statement. Thereupon, his statement was recorded by the Investigating Officer at 6.10 P.M. on 27.9.1991.

The Investigating Officer searched for the accused. He arrested accused Jagroop Kaur and Jarnail Singh on 6.10.1991 and Mukhtiar Singh and Kesar Singh on 13.10.1991. Mukhtiar Singh made disclosure statement, Ex.PV and in pursuance thereof, got recovered licenced double barrel .12 bore gun. Kesar Singh, accused also made disclosure statement Ex.PX and got recovered Bala (wooden plank).

On completion of the investigation, challan was presented and all the accused were charged under Sections

307, read with Section 34, and 323 read with Section 34 IPC. Apart therefrom, Accused Kesar Singh was charged under Section 302 IPC substantively. Accused Mukhtiar Singh and Jarnail Singh were also charged under Sections 302 read with Section 34, 307 IPC. Accused Mukhtiar Singh was also charged under Section 27 of the Arms Act. Jagroop Kaur was also charged under Sections 302 read with Section 34 and 323 IPC.

The prosecution in order to prove its case examined as many as 8 witnesses in all including PW3-Avtar Singh, PW4-Rup Singh, eye-witnesses and PW8 SI-Darshan Singh, the Investigating Officer. When examined under Section 313 Cr.P.C., the accused pleaded innocence and false implication on account of previous enmity. However, Jagroop Kaur took the plea that Kartar Singh, father of Baldev Singh died about 18/19 years ago and thereafter his wife Ranjit Kaur @ Surjit Kaur had started living with one Dari at Dhuri and from his loins two children were born. Baldev Singh had been objecting the relationship between his mother and aforesaid Dari. Avtar Singh and Rup Singh also did not like the visits of Ranjit Kaur @ Surjit Kaur to the village of Dari. Ranjit Kaur @ Surjit Kaur was also not on good terms with the accused party. On the date of occurrence, Ranjit Kaur @ Surjit Kaur along with Dari visited the village and a fight took place between Baldev Singh and his brother on one side and aforesaid Dari on the other. She (Jagroop Kaur) came out of her house and received injuries in the said fight at the hands of the

fighting parties. After the death of Baldev Singh @ Bhim, Ranjit Kaur @ Surjit Kaur and Avtar Singh concocted a false version and falsely implicated her in this case.

Learned trial court after taking into consideration the facts and evidence on record came to the conclusion that accused persons had come to the house of the injured and deceased fully armed. After Mukhtiar Singh raised lalkara, all of them attacked Baldev Singh and Rup Singh. Kesar Singh, accused gave a *Bala* blow on the head of Baldev Singh, who, later on, succumbed to the head injury. Meanwhile, Jarnail Singh gave a *Gandasa* blow on the head of Rup Singh, which was declared to be dangerous to life. Thus, the trial Court convicted and sentenced accused Mukhtiar Singh, Kesar Singh and Jarnail Singh, however, acquitted accused Jagroop Kaur by giving benefit of doubt, as detailed in para-1 above.

Since aggrieved by the judgment of conviction and order of sentence, accused Mukhtiar Singh, Kesar Singh and Jarnail Singh have filed the present appeal. However, no appeal against the acquittal of Jagroop Kaur has been filed either by State of Punjab or by the complainant.

We have heard learned counsel for the parties and, with their assistance, carefully scrutinized the evidence on record.

Learned counsel for the appellants has challenged the prosecution case mainly, on the ground that both the

eye-witnesses i.e. PW3-Avtar Singh and PW4-Rup Singh are interested and related witnesses and, therefore, no reliance can be placed on their statements. He further argued that there is a considerable delay in lodging the FIR. He pointed out that the occurrence took place at 9.00 P.M. on 26.9.1991. As per the statement of Rup Singh, Avtar Singh and Kaka Singh got down from the tractor-trolley near the railway crossing, which is only at a distance of 4 killas from the hospital and 2½ killas from the Police Station. It has further been stated by PW4-Rup Singh that they had reached the hospital at 10.00 or 10.30 P.M., therefore, Avtar Singh, complainant must have met the police at 10.00 P.M. or even prior thereto. However, his statement has been recorded at 1.40 A.M. on 27.9.1991 i.e. after a delay of almost 4 hours and 40 minutes. It is pleaded that this time was utilized by the prosecution to falsely implicate the accused persons after due deliberations.

Learned counsel for the appellants further argued that Mukhtiar Singh was not even present at the place of occurrence as neither any injury, having been caused to the deceased or witnesses, has been attributed to him nor he received any injury in the incident. The recovery of gun and empties by the investigating agency from his house is manipulated. It is further argued that no independent person was joined at the time of recovery of the alleged empties and the gun at the instance of Mukhtiar Singh. Learned counsel further pointed out that there are several

discrepancies in the statements of PW3-Avtar Singh and PW4-Rup Singh with regard to manner of injuries received by Baldev Singh (deceased) and Rup Singh.

The next argument raised by learned counsel for the appellant is that none of the co-accused shared common intention or knowledge with accused Kesar Singh for causing any bodily injury on the person of Baldev Singh (deceased), therefore, applicability of Section 34 IPC is not made out. As far as part played by Jarnail Singh in the commission of crime, the injuries on the person of Rup Singh are simple in nature. No fracture was detected underneath the injuries and, therefore, no offence under Section 307 IPC is made out.

Learned counsel then argued that even against Kesar Singh, offence under Section 302 would not be made out. It has come in the evidence that injury was caused by him with *Bala* (a wooden plank), which is, commonly, not known as a deadly weapon. It appears that some altercation or dispute might have taken place and he picked up the *Bala* from the place of occurrence and caused the injury. He further pointed out that there is no evidence on record from which it can be safely inferred that he was having an intention to cause such bodily injury as would be sufficient to cause death of Baldev Singh in the ordinary course of nature. At the most, it can be inferred that he was having knowledge that such injuries could cause death,

therefore, only a case under Section 304 IPC would be made out.

On the other hand, learned State counsel submitted that the prosecution case is fully supported by the testimonies of PW3-Avtar Singh and PW4-Roop Singh. Their presence at the spot was quite natural, as the occurrence took place in front of neighbouring house of Baldev Singh. It is pointed out that Avtar Singh had no axe to grind with the accused persons. He is the real brother of late Kartar Singh, father of Baldev Singh (deceased) and PW4-Rup Singh and Mukhtiar Singh, accused. There is no evidence on record that Avtar Singh was, in any manner, inimical towards the accused persons or had special leaning in favour of Rup Singh and Baldev Singh. Learned State counsel further argued that testimonies of PW3-Avtar Singh and PW4-Rup Singh have further been corroborated by medical evidence and recovery of weapon of offence. It is further argued that the defence taken by the accused persons is totally non-existent. It is highly improbable that Dari who is an outsider, would dare to cause death of Baldev Singh whose uncles and brothers are living in the close vicinity, as they would not allow Dari to go scot free. Complainant Avtar Singh would also not falsely implicate the accused persons in place of Dari, if he was the real culprit.

On careful scrutiny of evidence on record, we find that the testimonies of PW3-Avtar Singh and PW4-Rup Singh are worthy of credence. PW3-Avtar Singh, complainant

is the brother of Mukhtiar Singh, accused and late Kartar Singh, who was father of Baldev Singh (deceased) and Rup Singh. A suggestion was put to Avtar Singh that he has falsely implicated the accused persons on account of previous enmity as Mukhtiar Singh had caused injury to Avtar Singh, about 5 years prior to the present occurrence. Mukhtiar Singh, however, denied the said suggestion point-blank. The accused have failed to produce any evidence to show that Avtar Singh and Rup Singh had any enmity or grudge against Mukhtiar Singh and his sons. Relationship of Avtar Singh with the accused as well as deceased and Rup Singh is on equal footing. It cannot be inferred from his deposition that he had any leaning towards one party and was biased against the other. Rup Singh, PW4 is an injured witness. He was medico-legally examined by -Dr.Baljit Singh, PW2 at 1.05 A.M. on 27.9.1991 i.e. immediately after the occurrence.

The learned counsel for the appellants vehemently argued that there is a considerable delay in lodging the FIR and the same has been used by the prosecution to concoct a false story. The occurrence in the present case took place at 9.00 P.M. on 26.9.1991 in Village Rulda Singh Wala. No vehicle was available at the place of occurrence for removing the injured to hospital. Avtar Singh sent his son Ajaib Singh for making arrangement of some conveyance. Thereafter, Ajaib Singh brought a tractor-trolley from the neighbouring village Barrarwal. While the injured were

being removed to the hospital in the said tractor-trolley, PW3-Avtar Singh and his brother Kaka Singh got down at the railway crossing and went to lodge report in Police Station Dhuri. Statement of PW3-Avtar Singh was recorded and completed at 1.40 A.M. on 27.9.1991. There was no dispute with regard to identity of the accused, as all the accused, complainant, deceased and PW4-Rup Singh are *inter se* related. From the evidence on record, we find that there appears to be no delay in lodging the FIR. If at all, there is some delay, the same has been fully explained by the complainant. Moreover, the prosecution case is also supported by cogent and unimpeachable ocular and medical evidence.

Learned counsel for the appellants further argued that the prosecution has tried to make certain manipulations. It was argued that PW2-Dr.Baljit Singh, vide endorsement Ex.PH/1, declared Rup Singh unfit to make statement at 2.20 A.M. on 27.9.1991, whereas, in his cross-examination, he stated that Rup Singh was conscious when he came to hospital and he never became unconscious. His statement, therefore, shows that Rup Singh was fit to make statement after he was admitted in the hospital, but his statement was not recorded by the prosecution. The circumstance pointed out by the learned counsel, in no way, causes any dent in the prosecution case as Avtar Singh, PW3 had already reported the matter to the police. Moreover, from a perusal of endorsement Ex.PG/1 on application, Ex.P.G., it is evident that Rup Singh was declared fit only

at 6.10 P.M. on 27.9.1991. In the cross-examination, of course, Dr. Baljit Singh, PW2 stated that the injured was conscious and never became unconscious. However, this may be on account of lapse of time as he was examined in the Court after about 1 year and 8 months.

On careful consideration of the evidence on record, we are of the view that the prosecution has been able to prove that Baldev Singh (deceased) was caused injuries by Kesar Singh with a Bala on his head, which proved to be the fatal injury. It has also been well proved that Jarnail Singh caused injuries on the person of Rup Singh, injured. However, there is nothing on record to show that any firearm injury was caused from the gun of Mukhtiar Singh. It has only come in the evidence that Mukhtiar Singh came in front of the neighbouring house of the complainant and exhorted his companions to charge at them. The only allegation against him is that he has fired two gunshots aiming at Harbans Singh, but no injury was caused on the person of Harbans Singh. Even both PW3-Avtar Singh and PW4-Rup Singh have stated that Mukhtiar Singh had fired gunshot aiming at Harbans Singh. However, Harbans Singh has not been produced in the witness box.

There is also no evidence that accused Mukhtiar Singh and/or Jarnail Singh had shared any intention with Kesar Singh to cause the death of Baldev Singh. The provisions of Section 34 IPC are, therefore, not attracted

in the present case. It is well established that applicability of Section 34 IPC would depend upon facts and circumstances of each case. In order to attract the provisions of Section 34 IPC, acts by different persons must have been actuated by one and the same common intention. There has to be simultaneous consensus of minds of the persons participating in the criminal action to bring about a particular result. The prosecution, in the present case, has not been able to establish by any direct or circumstantial evidence that there was meeting of mind of all the accused persons to commit the offence punishable under Section 302 IPC.

As discussed above, the only allegation against Mukhtiar Singh is that he had raised lalkara to take charge of them as they were defaming his daughter-in-law. The prosecution has not been able to prove that he was having intention to cause injury to anyone from the complainant side. In case Mukhtiar Singh so intended, he could have used the gun, which he was allegedly, holding at the time of occurrence. It has also come in the evidence that the gun alleged to have been recovered from Mukhtiar Singh, is a licenced gun. In these circumstances, Mukhtiar Singh cannot be held guilty for the offences punishable under Sections 307, 302/34 307/34, 323/34 IPC and Section 27 of the Arms Act. He is, therefore, acquitted of the charges framed against him.

As regards Jarnail Singh, it is apparent from the evidence on record that he has not caused any injury to the deceased. He is alleged to have caused injury on the person of PW4-Rup Singh. PW2-Dr. Baljit Singh medico-legally examined Rup Singh and found three injuries on his person. Injury No.1 is a lacerated wound on the left parietal region. Injury Nos.2 and 3 are complaints of pain over left scapula and anterior aspect of right knee joint. Injury No.1 was kept under observation while injuries No.2 and 3 were declared to be of simple nature. The Medical Officer has given his opinion vide endorsement, Ex.PJ/1 on the application, Ex.PJ moved by Investigating Officer. A perusal thereof shows that injury No.1 could have been dangerous to life and that is why it was kept under observation. However, there is no definite opinion that injury No.1 was dangerous to life. The said opinion was obtained by the Investigating Officer after about 1 month and 22 days when the Public Prosecutor, at the time of checking challan, raised the objection to the effect that no opinion with regard to injury No.1 on the person of Rup Singh had been obtained from the doctor. Therefore, it is not at all proved that injury No.1 on the person of Rup Singh was dangerous to life. Even it is not proved that there was any fracture underneath injury No.1. Thus, it can well be inferred that all the injuries on the person of Rup Singh were simple in nature, therefore, only an offence under Section 323 IPC would be made out against accused Jarnail Singh. We therefore, set aside the conviction and

sentence of accused-Jarnail Singh under Sections 307, 307/34, and 302/34 IPC and instead convict him under section 323 IPC and the sentence of imprisonment imposed on him is reduced to the period already undergone by him.

However, Keser Singh, accused had caused the fatal injury on the person of Baldev Singh with Bala (a wooden plank), which is commonly not known as a deadly weapon. As discussed above, the accused persons were not happy with Baldev Singh, etc., as they had defamed their daughter-in-law. There must have been some altercation on this account and during the process, Keser Singh might have picked up a Bala (wooden plank) and caused one injury on the head of Baldev Singh (since deceased). Admittedly, the assault was not repeated. In such a situation, it can well be inferred that the accused might have given the blow in the heat of passion. There is no evidence to show that accused had an intention to kill or to inflict an injury of a particular degree of seriousness. In order to impose punishment proportionate to the gravity of offence, the Indian Penal Code recognizes three degrees of culpable homicide. The first degree is the gravest form of culpable homicide, which is defined in Section 300 IPC as 'murder'. The second degree may be termed as "culpable homicide of the second degree", which is punishable under first part of Section 304 IPC. Then there is "culpable homicide of the third degree", which is punishable under second part of Section 304 IPC. Of course, there is no straitjacket formula

that by inflicting a single blow or a particular injury, the offence would fall within the provisions of Section 304, Part-I or Section 304, Part-II. However, various factors, such as, weapon of offence, intention of the assailant, seat and nature of injury, conduct of accused before, during and after the offence and also the motive, if any, would, in fact, enable the court to make out as to under which of the species of culpable homicide a case would fall. A reference to Section 304 IPC would show that in Part-I, there is intention while in Part-II there is only knowledge and intention is expressly excluded. Part-II of Section 304 IPC speaks of the act done with the knowledge that it is likely to cause death, but without any intention to cause death. Where an injury is inflicted by the accused on a vital part of body of the victim in a sudden quarrel, conviction under Section 304, Part-II would suffice. Looking at the totality of the evidence in the instant case, it would not be possible to come to the conclusion that the accused Kesar Singh was having an intention to commit murder of Baldev Singh. He could only be attributed with the knowledge that blow given by him was likely to prove fatal. We are, therefore, of the view that the injury caused by accused Kesar Singh would fall under exception 4 of Section 300 IPC punishable under Section 304, Part-II. Accordingly, we set aside the conviction and sentence of accused Kesar Singh under sections 307/34, 323/34 and 302 IPC and instead hold him guilty under section 304 Part II I.P.C. We are of the considered opinion that the interests

of justice would be amply met, if the sentence imposed on the accused is reduced to ten years rigorous imprisonment and to pay a fine of Rs.50,000/- which shall be deposited within three months from the date of this judgment. In default of payment of fine, the accused shall undergo R.I. for 3 years. The amount of fine shall be disbursed to the legal heirs of deceased Baldev Singh as compensation.

The appeal is, thus, partly, allowed in the above terms.

(NIRMAL YADAV)
JUDGE

September 20, 2007 **(JASBIR SINGH)**

pc **JUDGE**